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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,243	06/22/2001	Johannes Schlebusch	10035.00	4928

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EXAMINER

SAYALA, CHHAYA D

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/01/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/806,243

Applicant(s)

SCHLEBUSCH ET AL.

Examiner

C. SAYALA

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the corresp ndence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 6, - either- - should be inserted before "selected" and in line 8, "either selected" should be deleted to conform with the format used at lines 11-12, which provides a clearer definition of the claim.

In claim 1, and claim 5, line 3, claim 16, line 3, "other" is indefinite because it is not clear what else applicant intends as part of his invention. "Atoxic" is unclear in claims 1, 5 and 16. What is "atoxic"?

In claims 2 and 3, "the solid phase" lacks proper antecedent basis.

In claim 1, line 13, "a combination of substances from the different groups" is unclear and indefinite. There are a total of 4 groups in this claim and it is unclear if applicant intends all 4 groups or just the groups of water-binding components.

In claim 9, line 1, "and" should be changed to - - or- -.

In claims 9 and 11, "preferably" renders the claim indefinite because it is not clear if applicant is claiming just the preferred embodiments.

In the claims 1, 5, 13 and 16, "water-absorbing substances" is indefinite because neither the specification nor the claims define what such substances are so that it can be determined what compounds these terms include for purposes of search and comparison with prior art.

In claims 2 and 3, is applicant claiming amounts of fat or a fat to oil proportion?

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Lee (US Patent 5456933) or Bernotavicz (US Patent 4143168) or WO 97/02760.

'933 teaches a uniform, "cohesive shaped piece which maintains its distinctive definitive shape upon hydration and retort", which contains soy or wheat gluten and starch from cereal flours. Col. 5. '168 teaches a blood chunk product that contains amylaceous ingredients such as starch, that is stable under canning conditions and is firm and stable in texture. Col. 4. '760 teaches a product that contains blood proteins and egg solids, and wheat flours and gluten to form a product with a meat-like chewy product. See page 5.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 1-4, 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (US Patent 5456933).

The patent teaches that the product contains 15-65% starch from cereal flours. A fat source is also included and is in a range, 0-9 wt%, within the claimed range of less than 5%. The ratio of protein to starch can be fathomed from the various amounts at Table I. At col. 4, lines 16-30 and col. 5, lines 59-65, the patent states that the exact amounts of protein, carbohydrate and fat can be selected from the amounts given (that already include the ranges claimed herein), depending on the specific type of ingredient, and determining the amount of ingredient needed to achieve the necessary concentration in the ranges specified in Table I. Even though the patent shows a variety of ratios of protein and starch at Table I, it would have been obvious to one of ordinary skill in the art to fathom amounts within the ranges/amounts shown to achieve the type of uniform, "cohesive shaped piece which maintains its distinctive definitive shape upon hydration and retort", as needed. Claims 9-12 recite limitations relating to the appearance of the product. In this regard, the patent states that the reference product is spongy to the touch and chew. See col. 3, lines 5-10. The office is not equipped to manufacture prior art products and compare them with what is claimed, and it would have been obvious to one of ordinary skill in the art at the time the invention was made that the reference description of being spongy reads on being "deformation-resistant" to outside touch.

7. Claims 1-4, 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernotavicz (US Patent 4143168).

The patentee teaches a mixture of blood chunks and gums, including carboxymethylcellulose and cellulose (col. 7, lines 10-15), at least one amylaceous ingredient and water-absorbers. Vegetable proteins such as soybean flour (col. 4, lines 7-11) are also included. Starch, up to 4%, is shown at col. 4, lines 35-40. The gum used is up to 3 wt% of blood. The blood is present between 45-99.4%. Animal fats are added shown up to 1.9% at col. 7, lines 10-30. The patent states that the product is a blood and gum chunk product that is stable under canning conditions. See col. 3. The

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amounts are not the same but it would have been obvious to one of ordinary skill in the art to vary amounts so that small modifications can be made to render the product with a firm, stable texture, as desired. Claims 9-12 recite limitations relating to the appearance of the product. In this regard, the patent states that the reference product is moist, firm and stable. The office is not equipped to manufacture prior art products and compare them with what is claimed, and it would have been obvious to one of ordinary skill in the art at the time the invention was made that this reference description reads on being "deformation-resistant" to outside touch.

8. Claims 1-4, 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/02670.

'670 teaches a chunk product that consists of blood proteins, egg solids and wheat flour, gluten and soy meal, less than about 20 wt %. The protein content is 10-22% wt. See page 5. The fat content is given as between 5-25% wt. See page 6, line 9. Note that the patent also teaches "However the amount of fat is not an important parameter....and the amount can be selected as desired. Consequently, no fat need be added". And "Reducing the importance of fat as a parameter in the process is a major advantage of the process. Thus it would have been obvious to one of ordinary skill in the art, that even though the amount of fat is at 5%, to reduce it as suggested by the reference itself, would be advantageous. The ratio of protein to starch is not given per se, but it would be obvious to fathom such from the amounts given for individual ingredients. Claims 9-12 recite limitations relating to the appearance of the product. In this regard, the patent states that the reference product is moist, stable to canning procedures and is chewy and has a meat-like appearance. The office is not equipped to manufacture prior art products and compare them with what is claimed, and it would have been obvious to one of ordinary skill in the art at the time the invention was made that this reference description reads on being "deformation-resistant" to outside touch.

Prior Art of Record


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA at Group 1761, telephone number (703) 308-3035.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-0661.


C. SAYALA
Primary Examiner
Group 1700.